Supreme Court, U.S.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

WARREN C. BULETTE, KATHRYN K. BULETTE, A. BURNEL CHURCH, DORIS L. CHURCH, STEPHEN S. SECHRIST, MARY LOUISE SECHRIST, OTIS B. MORSE, MARY L. MORSE, HARRY A. BROWN, FREDERICK B. HOLMES, EUNICE S. HOLMES, H. CHARLES HAFEY, and YORK COUNTY TAXPAYER'S COUNCIL,

Petitioners

v.

GEORGE M. TROUT, ROBERT A. MINNICH, and NEWTON D. BROWN, in their official capacities as members of the YORK COUNTY BOARD OF COMMISSIONERS and ex officio members of the YORK COUNTY BOARD OF ELECTIONS,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether a State may preclude the exercise of the fundamental constitutional rights to petition for redress of grievances or to associate freely for the advancement of political beliefs on the sole basis that the State has failed to provide a procedural mechanism for the exercise of those rights?

(Suggested answer: No.)

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PETITION
IN THE SUPREME COURT OF THE UNITED STATES

WARREN C. BULETTE, KATHRYN K. BULETTE, A. BURNEL CHURCH, DORIS L. CHURCH, STEPHEN S. SECHRIST, MARY LOUISE SECHRIST, OTIS B. MORSE, MARY L. MORSE, HARRY A. BROWN, FREDERICK B. HOLMES, EUNICE S. HOLMES, H. CHARLES HAFEY, and YORK COUNTY TAXPAYER'S COUNCIL,
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v.

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States

---

Charles R. Gerow respectfully presents this Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

REFERENCE TO OPINIONS DELIVERED IN THE COURTS BELOW

The Order of the Pennsylvania Supreme Court, entered November 18, 1994, No. 207 Middle District Allocatur Docket 1994, appears in the Appendix attached hereto. The Opinion of the Commonwealth Court of Pennsylvania to No. 883 C.D. 1994, April 26, 1994, unreported, also appears in the Appendix attached hereto. The Opinion of the York County Court of Common Pleas to No. 94 SU 01193 08, April 19, 1994, also unreported, also appears in the Appendix attached hereto.

JURISDICTION

The Supreme Court of Pennsylvania entered its Order denying Petition for Allowance of Appeal from the decision of the Commonwealth Court of Pennsylvania on November 18, 1994. This Petition for Certiorari was filed within (90) ninety days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States of America.

Amendment I.

Congress shall make as law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

STATEMENT OF THE CASE

This case concerns whether a local (i.e., county) Board of Elections can present, restrain, restrict, or refuse to give full and complete effect to the free exercise of a fundamental constitutional right. Specifically, Petitioners, individual registered electors residing within the York Suburban School District, and the York County Taxpayers Council, requested the placement of a non-binding referendum question on the May, 1994 Primary Ballot. To that end, they circulated a Petition and acquired 987 signatures, the validity of which have not been questioned, in support of having said question placed on the primary election ballot.

On or about January 7, 1994, Petitioners filed the Petition with the York County Board of Elections, requesting the Board to place the referendum question on the May primary ballot. The Board of Elections refused to do so without any comment.

On March 29, 1994, Petitioners filed a Complaint in Mandamus in the Court of Common Pleas of York County to compel the York County Board of Elections to place the following non-binding referendum on the primary ballot:

Should a freeze be placed on your 1993 school tax dollar for real estate and per capita assessed by the York Suburban School Board through December 31, 1996, except for an interim addition to or successful appeal on your property?

The Court gave the parties two days in which to brief the complex issue raised on the case, conducted oral argument the following day and issued a decision from the bench refusing to direct the Board of Elections to place the requested referendum on the Primary Ballot. The Court issued a written Order four days late, and an Opinion one week after that.

On April 13, 1994, Petitioners filed an appeal with the Commonwealth Court of Pennsylvania together with a Motion for Expedited Disposition, which the Court granted on April 18, 1994. Whereupon the case was

submitted to the Court on briefs only as oral argument could not be scheduled under the time frame of the expedited disposition. On April 26, 1994, the Court issued an Opinion and Order affirming the decision of the Court of Common Pleas of York County. The Commonwealth Court searched for specific enabling legislation to give force and effect to Petitioners' constitutional rights which the Court specifically recognized as had the lower court. The Commonwealth Court ruled that before a non-binding referendum question could be placed on the ballot, the General Assembly of Pennsylvania must first specifically present the particular type of referendum procedure and process to be followed. j The Commonwealth Court failed to recognize that a prior legislatively-mandated procedural formulation is not a prerequisite to the full and complete exercise of an inalienable and indefeasible constitutional right.

On or about May 6, 1994, Petitions filed with the Supreme Court of Pennsylvania a Petition for Allowance of Appeal, raising therein both the state and federal constitutional question. Although a thorough and complete review of all the published opinions of the Supreme Court of Pennsylvania revealed that it had never before been asked to consider the question placed before it by Petitioners, the Supreme Court of Pennsylvania nevertheless refused to hear the case entering an Order on November 18, 1994, denying Petitioners' Petition for Allowance of Appeal.

Petitioners raised issues under the First Amendment of the United States Constitution at both the trial and appellate levels. The Opinion of the Commonwealth Court confirmed that First Amendment issues were raised in Petitioners brief. There were no oral arguments at any appellate level and hence the issue was decided on briefs only.

REASONS FOR ALLOWANCE OF THE WRIT

THE PENNSYLVANIA COURTS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Pennsylvania Commonwealth Court (and by denying allowance of appeal, the Pennsylvania Supreme Court) decided a question of substance not heretofore determined by the Supreme Court of the United States. Specifically, the state courts found that the "citizens rights to modify government, to petition for redress of grievances, and to exercise their First Amendment rights of free speech are in no way trammeled because of the absence of legislative provisions for non-binding referenda."

A thorough and complete review of the opinions of the Supreme Court of the United States reveals that this Court has never considered this question. In every reported instance, the Opinions of this Court have dealt with the mirror opposite of the facts presented here. (i.e., petitions seeking to strike off referenda placed upon state ballots.)

The Pennsylvania Courts erroneously required a specific Act of the Pennsylvania General Assembly in order to give meaning and effect to the exercise of a fundamental constitutional right. The correct view is that these rights of the people are sacrosanct, absolute and subject only to reasonable legislative requirements. This principle is well-established in the decisions of this Court:

> A referendum cannot, however, be characterized as a delegation of power. Under our constitutional assumptions, all power derives from the people, who can delegate it to representative instruments which they create. *See, e.g.*, Federalist Papers, No. 39 (Madison). In establishing legislative bodies, the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature. *Hunter v. Erickson*, 393 U.S. 385, 392, 21 L. Ed.2d 616, 89 S. Ct. 557, 47 Ohio Ops. 2d 100 (1969).
>
> The reservation of such power is the basis for the town meeting, a tradition which continues to this day in some States as both a practical and symbolic part of our democratic processes. The referendum, similarly, is a means for direct political participation, allowing the

people the final decision, amounting to a veto power, over enactments of representative bodies. The practice is designed to "give citizens a voice on questions of public policy." *James v. Valtierra*, supra, at 141, 28 L. Ed.2d 678, 91 S. Ct. 1331.

Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 672-73 (1976).

The First Amendment guarantees of free speech, right to petition for redress of grievances and right to free association for the advancement of political beliefs and views, all buttress the fundamental concept of popular sovereignty, the hinge upon which the door of liberty opens. For that reason this Court consistently has ruled that an electorate has the a right to demand in advance that any given issue, other than those already decided by the Constitution, be decided at the polls rather than by electoral representatives. The power to enact laws and control public servants lies with the great body of the people. *Pacific States T & T Co. v. Oregon*, 223 U.S. 118 ( ). *Cochran v. Louisiana State Board of Education*, 281 U.S. 370, 374 ( ).

Accordingly, an agency of state government is required to do all within its power to provide full access to the political and governmental process and its attendant machinery for citizens to petition, for review of grievances or to associate for the advancement of political issues in such manner as they may deem fit from time to time. This is most especially so with respect to the machinery of elections which are the cornerstone of our form of government. To say that the right to petition exists but cannot be done through the electoral ballot which is the most efficient, economical, valid and integrity guaranteed method and means is no different than holding that the right to assemble peaceably exists but that citizenry may not execute such a right on the public square without a specific enabling statute.

Specifically, the U.S. Constitution confers upon citizens the constitutional right to petition their government or to associate freely for the advancement of political issues. Also, citizens have a right to petition their government for redress of grievances. These rights are inalienable, inviolate and not subject to limitation by the general power of state government. Further, the right to vote in a general election is a "fundamental political right . . . preservative of all rights," *Reynolds v. Sims*, 377 U.S. 539, 562 (1964), and state laws which restrict the

franchise are subject to strict scrutiny. *Dunne v. Blumstein*, 405 U.S. 330, 343 (1972).

The free exercise of constitutional rights is not dependent on the whim of the General Assembly. The Constitution, not the legislature, delineates the scope of the people's inherent powers. In fact, the Constitution specifically prohibits the legislature from interfering with or transgressing the inherent rights of the people. Thus, any attempt by the General Assembly, except perhaps implementing reasonable administrative procedures for the exercise of Plaintiffs' inherent rights, is blatantly unconstitutional The Commonwealth Court and Supreme Court of Pennsylvania failed to recognize this.

Following the Pennsylvania Courts' logic, the freedom of speech guaranteed by the First Amendment to the United States Constitution could properly be exercised only in those instances where the legislature has specifically authorized speech. It is axiomatic that a constitutional right needs no enabling legislation to provide for its enforcement.

This is not the first time the Commonwealth Court of Pennsylvania ignored inherent constitutional rights. This time, the Court blindly followed two of its earlier decisions, neither of which concerned the constitutional issues presented in the instant case. See *Schuylkill County v. Blythe Tp.*, 143 Pa. Commonwealth Ct. 341, 600 A.2d 231 (1991); *Hempfield Sch. Dist. v. Election Bd. of Lancaster County*, 133 Pa. Commonwealth Ct. 85, 574 A.2d 1190 (1990), *app. denied*, 525 Pa. 650, 581 A.2d 575 (____).

In the present issue, the Pennsylvania Courts again became fixated with a statutory analysis and solution. The Court scoured the state Election Code process by which a non-binding referendum may be incorporated on a ballot and incorrectly concluded it did not exist.

In fact, as in *Eastlake*, the people of Pennsylvania have reserved the power of referendum. The Declaration of Rights set forth in Article I of the Pennsylvania Constitution is older than the United States, predates our federal Constitution by more than a decade, and has remained virtually unchanged since 1776, despite numerous constitutional conventions. *See, Pennsylvania Constitutional Law*, Robert E. Woodside. Its purpose is to place limitation on the power of state

government to infringe upon the material rights of citizens. *Western Pennsylvania Socialist Workers 1982 Campaign v. Connecticut General Life Ins. Co.*, 512 Pa. Pa. 23, 515 A.2d 1331 (1986). In fact, the Pennsylvania Supreme Court has referred to these various rights as "the hallmarks of Western Civilization." *Andress v. Zoning Board of Adjustment*, 410 Pa. 77, 86, 188 A.2d 709, 713 (1963). The "rights enumerated in the Declaration of Rights are deemed to be inviolate and may not be transgressed by government." *Gondelman v. Commonwealth of Pennsylvania*, 520 Pa. 451, ____, 554 A.2d 896, 904 (1989) *cert. denied*, 493 U.S. 849, 1076 E.D.2d 105, 110 S. Ct. 146 (1989), (citing *Spayd v. Ringing Rock Lodge No. 665, Brotherhood of Railroad Trainmen*, 270 Pa. 67, 113 A.70 (1921)).

Article I of the Pennsylvania Constitution provides in pertinent part:

> Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times *an inalienable and indefeasible right to alter, reform and abolish their government in such manner as they may think proper.*
>
> Section 20. The citizens have a right in a peaceable manner to assemble together for their common good, and *to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition*, address or remonstrance.

Pa. Const. Art. I (emphasis added).

Beyond outlining specific rights inherent in the citizenry, the concept of the sanctity of those rights is expressly articulated in Article I of the Pennsylvania Constitution. *Gondelman.* The rights conferred upon the people therein may not be transgressed by the government under any circumstance:

> To guard against transgressions of the high powers which we have delegated, *we declare that everything in this article is excepted out of the general power of government and shall forever remain inviolate.*

Pa. Const. Art. I, § 25 (emphasis added). Thus, the Pennsylvania Constitution greatly limits the power of the state government, including

the legislature, to infringe upon rights inherent in the citizens of this Commonwealth. *Western Pa. Socialist Workers 1982 Campaign*, 512 Pa. at ____, 515 A.2d at 1334 ("particular sections of the Declaration of Rights represent specific limits on governmental power.").

Specifically, the Pennsylvania Constitution confers upon citizens the constitutional right to alter and reform their government. Pa. Const. Art. I, § 2. Also, citizens have a right to petition their government for redress of grievances. Pa. Const. Art. I, § 20. These rights are inalienable, inviolate and not subject to limitation by the general power of the state government. Pa. Const. Art. I, § 25.

Simply put, Petitioners merely ask the Court to recognize the powers inherent in the people under the plain language of Article I of the Pennsylvania Constitution. For this Court to do otherwise, i.e., to focus on a presumed lack of legislative authority and to rule that the legislature defines the scope of the peoples' rights, would itself violate the doctrine of separation of powers by legislating away rights inherent in the people. The proper role of a court in this regard is to recognize the rights of the people, recognize the duties of the governing bodies, and ensure the exercise of the people's rights through available means, including mandamus.

Petitioners have a clearly defined, constitutional right to alter, reform and petition their government through the referendum process. Respondents have a clearly defined constitutional and statutory duty to place all lawful questions on the Ballot.

Although a state may have the power to regulate the time, place and manner of its elections, that power does not eliminate the state's responsibility to observe the limits established by the First Amendment. *Ev v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989).

CONCLUSION

It is well settled that States may not do *indirectly* what they are prohibited from doing *directly*. Just as states are precluded from interfering or obstructing the free exercise of First Amendment rights of free speech and association and the right to petition, it is equally true that state governments cannot properly restrain, restrict or refuse to give the highest possible effect to the exercise of those rights. If the Pennsylvania Supreme Court is allowed to let stand a decision which clearly requires that there first be a specific statutory scheme for the most valid, efficient and economical means of exercise of First Amendment rights, then they will have been allowed to infringe, restrict, restrain and refuse and fail to give full, complete and most efficient, economical and valid effect to the exercise of fundamental constitutional rights. For that reason, Petitioners respectfully request that the Writ of Certiorari to the Supreme Court of Pennsylvania be allowed and granted. At stake in the issues of this case are the most fundamental, inherent and inviolate rights of the people of these United States.

Respectfully submitted,

Charles R. Gerow
Attorney for Petitioners

Dated: February 16, 1995

APPENDIX

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

No. 94 SU 01193 08

WARREN C. BULETTE, KATHRYN K. BULETTE, A. BURNELL CHURCH, DORIS L. CHURCH, STEPHEN S. SECHRIST, MARY LOUISE MORSE, HARRY A. BROWN, FREDERICK B. HOLMES, EUNICE S. HOLMES, H. CHARLES HAFEY, and YORK COUNTY TAXPAYER'S COUNCIL

v.

GEORGE M. TROUT, ROBERT A. MINNICH, and NEWTON D. BROWN, in their official capacities as members of the York County Board of Commissioners and ex officio members of the York County Board of Elections

APPEARANCES:

CHARLES R. GEROW, Esquire
For the Plaintiff/Petitioners

EDWARD R. LECATES, Esquire
For the Defendant/Respondents

MEMORANDUM IN SUPPORT OF ORDER

Plaintiffs' have appealed this Court's April 13, 1994 Order denying Plaintiffs' request for this Court to compel the York County Board of Elections to place a non-binding referendum on the upcoming ballot. The referendum

plaintiffs' seek concerns a three-year school tax freeze for citizens living within the York Suburban School District. Plaintiffs' base their request on a petition signed by over 700 citizens of York Suburban School District. Due to the expeditious manner in which plaintiffs are proceeding, a Statement of Matters

Complained of has not been provided. Thus, We provide a Supplemental Memorandum in the absence of the same.
Generally, for a court to grant relief in the form of mandamus, the plaintiff must establish:

(1) that the plaintiff has a clear legal right to the relief sought;

(2) that the defendant has a corresponding legal duty to perform the act which the plaintiff seeks to compel;

(3) that the defendant has been requested to, and has refused to, perform the act which the plaintiff seeks to compel; and

(4) that no adequate alternative remedy at law is available to the plaintiff.

As stated in our Order, We are not convinced that the Plaintiffs have a clear legal right to the relief sought. While Plaintiffs argue that the First Amendment of the United States Constitution and the Preamble to the Pennsylvania Constitution provide for such an inviolate right, significant doubt exists as to whether such inviolate rights extend to the right to place a non-binding referendum on a voting ballot. In fact, at least two Appellate Court cases not involving the First Amendment constitutional arguments proffered by Plaintiffs have held that the Court of Common Pleas was without the authority to mandate a non-binding referendum. Assuming arguendo that Plaintiffs have established a clear right to relief, they must also show that the defendant has a corresponding legal duty to place the non-binding referendum on the ballot as Plaintiffs request. Respondents argue that not only do they not have a legal duty, they are, in fact, without the authority to place a non-binding referendum on the ballot. In support of their argument, defendants cite *Hempfield School District v. Election Board of Lancaster Ct.*, Pa.Cmwlth. 574 A.2d 1190 (1990) and *Board of Elections v. Blythe Twp.*,, Pa.Cmwlth. 600 A.2d 231 (1991). Both of these cases stand for the proposition that the Election Code does not give the board of election discretion to place a nonbinding referendum on a ballot. Even if the election board was authorized to place such a referendum on the ballot, this would constitute a discretionary act. As such, it would not be subject to a mandamus action. *McKnight v. Board of Public Education*, 365 Pa. 422, 76 A.2d 207 (1§50). Accordingly, Plaintiffs have failed to establish that a mandamus is an appropriate relief.

Second, as stated in this Court's opinion, We are greatly concerned with separation of powers issues when a court is asked to mandate something which is vested within the powers of the executive or legislative branch of government. It is a priori that a governmental body such as an election board has only those powers expressly granted to it by the legislature." Hempfield, 574 A.2d 1190, 1191 (1990). Here, the legislature has not so provided and this Court declines to circumvent the legislative process by concluding a clear right exists and

granting the relief sought by Plaintiffs. While the freedom to petition is an inviolate right, there is no constitutional mandate that the petition act in the form of a referendum question.

Finally, had the legislature intended for such a process whereby citizens could by petition place a nonbinding referendum on the ballot, certainly standards and guidelines would have been made available to courts. Absent such standards or guidelines, the Plaintiffs, theory would suggest that any and all questions tendered at any time must be placed on the ballot. This is simply untenable and dilutes the very nature and purpose of our representative form of government. We also note that the Board of Elections first rejected Plaintiffs' request on January 28, 1994; however, no judicial or appellate relief was sought until March 29, 1994.

Accordingly, Plaintiffs' request for relief was thereby denied.

BY THE COURT,

_____

John C. Uhler
Judge

Dated: April 19, 1994

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 883 C.D. 1994
Submitted: April 25, 1994

WARREN C. BULETTE, KATHRYN K. BULETTE, A. BURNEL CHURCH, DORIS L. CHURCH, STEPHEN S. SECHRIST, MARY LOUISE SECHRIST, OTIS B. MORSE, MARY L. MORSE, HARRY A. BROWN, FREDERICK B. HOLMES, EUNICE S. HOLMES, H. CHARLES HAFEY, and YORK COUNTY TAXPAYER'S COUNCIL,
Appellants

v.

GEORGE M. TROUT, ROBERT A. MINNICH, and NEWTON D. BROWN, in their official capacities as members of the YORK COUNTY BOARD OF COMMISSIONERS and ex officio members of the YORK COUNTY BOARD OF ELECTIONS

BEFORE:
Honorable David W. Craig, President Judge
Honorable Joseph T. Doyle, Judge
Honorable Bernard L. McGinley, Judge
Honorable Dan Pellegrini, Judge
Honorable Rochelle S. Friedman, Judge
Honorable James R. Kelley, Judge
Honorable Sandra Schultz Newman, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY PRESIDENT JUDGE CRAIG FILED: April 26, 1994

Pursuant to this court's grant of expedited disposition of this case in view of the nearness of the May 10, 1994 election date, the court en banc has considered this case on briefs and now affirms the sound decision of Judge Uhler, of the Court of Common Pleas of York County, denying appellants' request for a writ of mandamus to command the York County Board of Elections to place on the May 10, 1994 ballot a non-binding referendum question asking

whether a described "freeze" should be placed upon real estate and per capita taxes of the York Suburban School Board.

This court has twice clearly ruled that election boards lack legal power under present Pennsylvania law to place non-binding referendum questions on the ballot, and therefore, even an election board which proposes to do so is subject to an injunction barring such an action. *Schuylkill County v. Blythe Township*, 143 Pa. Commonwealth Ct. 341, 600 A.2d 231 (1991); *Hempfield School District v. Election Board of Lancaster County*, 133 Pa. Commonwealth Ct. 85, 574 A.2d 1190 (1990), *app. denied*, 525 Pa. 650, 581 A.2d 575 (1990). Accordingly, the courts cannot use mandamus to compel election boards to perform an act thus held to be beyond their powers.

Those decisions of this court focused upon statutory provisions governing the placing of special questions upon the ballot, §§ 302(o) and 305(a)1 of the Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2642(o), 2645(a). Section 302, after prescribing specific powers and duties of election boards --- none relating to referenda --- concludes in subsection (o) with the power to perform "such other duties as may be prescribed by law." Neither Election Code § 305(a), which deals with election board powers and duties concerning "any special question which is required by law," nor any other statute provides any authority for the placing of non-binding referendum questions before the electorate.

In the absence of any statutory power or duty with respect to posing non-binding referendum questions, the appellants claim that such a "special question ... is required by law," i.e., by the following provisions of the Pennsylvania Constitution:

> Pa. Const., art. I, § 2, the people's right to alter, reform and abolish government; and
>
> Pa. Const., art. I, § 20, the right to petition for redress of grievances.

Appellants also appear to rely upon the right of freedom of speech guaranteed by the First Amendment to the United States Constitution.

None of these constitutional provisions even remotely suggest that the presentation of signed petitions by citizens can mandate election board actions and expenditures to pose non-binding referendum questions. Obviously, citizens' rights to modify government, to petition for redress of grievances, and to exercise their First Amendment rights of free speech are in no way trammeled because of the absence of legislative provision for non-binding referenda.

Nothing in our constitution supports appellants' contention that simply presenting a signed petition to an election board, calling for a duty not embodied

in legislation, must have the same effect as if the legislature itself had enacted a law prescribing the particular type of referendum procedure demanded.

This court, by its decisions cited above, has rejected the speculative conclusion in *Trexler Lake Project Referendum*, 4 D.&C. 3d 99 (1977), holding that, despite the absence of express legislative authority, an election board can use a non-binding referendum to conduct "what is essentially a public opinion poll." (4 D.&C. 3d at 103-04.)

If election ballots need to be converted into public opinion polling mechanisms subject to petition-signing groups --- possibly quite numerous --- that policy, and the additional funds needed to implement it are for the legislature to determine.

As Election Code sections 302 and 305 respectively state, additional election board duties are to be "prescribed by law," not by petition, and "any special question" is to be placed on the ballot as "required by law," not by petition.

Of course, the trial court could grant the requested writ of mandamus only if the York County Election Board can be said to have a clear, non-discretionary legal duty to do what appellants' petition demanded. *Frances v. Corleto*, 418 Pa. 417, 211 A.2d 503 (1965). And such a non-discretionary duty is nowhere to be found.

For the foregoing reasons, as also stated by Judge Uhler in his sound Memorandum in Support of Order dated April 19, 1994, the trial court's refusal of mandamus is affirmed.

/s/ David W. Craig
David W. Craig,
President Judge

Judge Friedman concurs in the result.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 883 C.D. 1994

WARREN C. BULETTE, KATHRYN K. BULETTE, A. BURNEL CHURCH, DORIS L. CHURCH, STEPHEN S. SECHRIST, MARY LOUISE SECHRIST, OTIS B. MORSE, MARY L. MORSE, HARRY A. BROWN, FREDERICK B. HOLMES, EUNICE S. HOLMES, H. CHARLES HAFEY, and YORK COUNTY TAXPAYER'S COUNCIL,
Appellants

v.

GEORGE M. TROUT, ROBERT A. MINNICH, and NEWTON D. BROWN, in their official capacities as members of the YORK COUNTY BOARD OF COMMISSIONERS and ex officio members of the YORK COUNTY BOARD OF ELECTIONS

ORDER

NOW, April 26, 1994, pursuant to expedited disposition granted by order of this court dated April 18, 1994, and consideration of the case pursuant to submission on briefs to the court en banc in accordance with the same order, it is hereby ORDERED that the decision of the Court of Common Pleas of York County, dated April 12, 1994, is affirmed upon the foregoing Memorandum Opinion and upon the consistent Memorandum in Support of Order, by Judge Uhler of the Court of Common Pleas of York County, dated April 19, 1994.

/s/ David W. Craig
David W. Craig,
President Judge

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 207 Middle District
Allocatur Docket 1994
Petition for Allowance of Appeal from
Commonwealth Court

WARREN C. BULETTE, et al,
Petitioner

v.

GEORGE M. TROUT, et al,
Respondent

ORDER

PER CURIAM:

AND NOW, this 18th day of November, 1994, the Petition for Allowance of Appeal is hereby denied.

Mr. Justice Frank J. Montemuro is sitting by designation.